## UNITED STATES OF AMERICA Before the COMMODITY FUTURES TRADING COMMISSION

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PROCEEDINGS CLERICA

CFTC Docket No.CRAMA 06-904

JORDAN ASSETS LTD. and WALLACE NEAL JORDAN

v.

NATIONAL FUTURES ASSOCIATION

ORDER DENYING STAY

Commodity pool operator ("CPO") Jordan Assets Ltd. ("JAL"), and Wallace Neal Jordan, JAL's owner and associated person ("Jordan") petition the Commission to stay the Member Responsibility Action ("MRA") issued against them by the National Futures Association ("NFA") on August 2, 2006. NFA opposes the petition. For the reasons that follow, the petition to stay is denied.

## BACKGROUND

On July 11, 2006, NFA instituted an MRA against JAL and Jordan after they failed to produce books and records requested during an NFA examination. The MRA also was prompted by a particular financial transaction: the Jordan Index Fund, a commodity pool that JAL operated, purchased an illiquid debenture from Jordan, valued at \$200,000, the face amount of the instrument. When purchased, the investment comprised almost 60 percent of the Index Fund's net asset value. Pursuant to the MRA, which became effective immediately, NFA suspended JAL and Jordan from NFA membership; barred them from soliciting or accepting customer or pool participant funds or trading for customers or pool participants except to liquidate existing positions; forbade them to disburse or transfer customer funds or pool funds

from any account without NFA approval; and required them to provide copies of the MRA notice to customers and pool participants, and to financial institutions with which they dealt.

JAL and Jordan requested a hearing, which was held on July 27, 2006. NFA staff indicated at the hearing that JAL had produced the records needed to complete NFA's audit the day before the hearing. NFA nevertheless determined that "other serious concerns" warranted keeping the MRA in effect, those concerns being principally the debenture investment and "Jordan's total lack of understanding of the regulations that govern the futures industry and operating a commodity pool." *In re Jordan Assets Ltd. and Wallace Neal Jordan*, NFA Case No. 06-MRA-002, slip op. at 12 (Aug. 2, 2006).

NFA ordered that the foregoing provisions of the MRA would remain in force until (1) JAL revised a pool disclosure document to NFA's satisfaction and provided it to pool participants; (2) JAL disclosed to NFA pool redemption requests received since April 11, 2006, and whether they had been met; and (3) JAL provided Index Fund pool participants with a copy of NFA's Notice of Regulatory Action ("Notice") appended to its decision. *Id.* at 15-16. NFA's decision also advised JAL and Jordan of their right to appeal its decision to the Commission and to seek a stay of the MRA's effectiveness pending appeal.

On August 24, 2006, the Commission received a Petition to Stay from JAL and Jordan, accompanied by an Affidavit executed by Jordan (collectively "petition"). Jordan avers that the MRA "has already harmed" pool participants "as long awaited opportunities for substantial profits have already been missed." Petition at 2, ¶ F. He also asserts that NFA's Notice "contains egregious misrepresentations of fact," *id.* at 3, and constitutes a "pernicious attack on [his] personal integrity," *id.* at 1.

NFA filed an opposition to the petition on September 5, 2006, arguing that it should be dismissed as untimely filed and that it failed to meet the standard for granting stays.

## **DISCUSSION**

Commission Regulation 171.43(a) provides that "[w]ithin ten days" after NFA serves its final decision in an MRA, any aggrieved party may ask the Commission to stay the effective date of the decision pending an appeal on the merits. In considering a stay petition, the Commission shall consider petitioner's likelihood of success on the merits; the likelihood that denial of the petition would result in irreparable harm to petitioner; the effect upon NFA of granting the petition; and the effect that granting or denying the petition would have on the public interest. *See* Regulation 171.43(d).

As NFA contends, the petition is untimely. Although the petition is unaccompanied by a certificate of service, it cannot have been filed with the Commission earlier than August 18, 2006, the date on which an Affidavit executed by Jordan, which accompanied the petition, was notarized. The petition should have been filed and served on or before August 17, 2006. See Regulation 171.8(a)(documents filed with the Commission may be delivered in person or mailed to the Proceedings Clerk, and "must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing"); *see also* 171.9(b)("When service is effected by mail, the time within which the person served may respond thereto shall be increased by five days."). The affidavit of service accompanying NFA's decision states that it was mailed to JAL and Jordan on August 2. Accordingly, the petition was late by at least one day. <sup>1</sup>

<sup>&</sup>lt;sup>1</sup> The filing was otherwise flawed in that JAL and Jordan directed it to the Commission's Division of Clearing and Intermediary Oversight, rather than to the Proceedings Clerk, and failed to serve a copy of the petition on NFA. See Regulation 171.9(a).

Apart from its procedural flaws, the petition does not meet the applicable standard for relief. Jordan avers that he will suffer financial and reputational harm if he disseminates NFA's Notice, which he contends "contains egregious misrepresentations of fact" regarding the liquidity of the debenture and the "misleading and deceptive statement" that the Fund departed from its stated trading guidelines in purchasing the debenture. Petition at 3, 4. As noted above, he also avers that the Index Fund participants have suffered, and continue to suffer, from lost profit opportunities because the Fund cannot trade. These circumstances fall short of the standard. "[M]ere monetary loss (*i.e.*, lost floor brokerage commission income and lost trading profits) . . . [does] not rise to the level of irreparable harm." *In re Bear Stearns & Co.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 25,017, 37,773 (CFTC Mar. 8, 1991); *accord, In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. ¶ 25,024, 37,986 (CFTC Mar. 27, 1991).

Nor have petitioners demonstrated a likelihood of success on the merits. Their arguments under that element of the stay standard merely ask the Commission to reweigh the evidence in their favor and do not merit extended discussion. We need not, and do not, reach the remaining elements of the standard. For the foregoing reasons, the petition to stay is denied.

IT IS SO ORDERED.

By the Commission (Chairman JEFFERY and Commissioners LUKKEN, HATFIELD, and DUNN).

Eileen A. Donovan

Acting Secretary of the Commission

Commodity Futures Trading Commission

Dated: September 26, 2006